REMARKS

The Examiner is thanked for the thorough examination of the present application, and for properly withdrawing his prior rejections. The patentability of the claims is discussed below.

I. The Claimed Invention

The invention, as recited in independent Claim 1, for example, is directed to a communications system which includes at least one destination server for hosting a plurality of electronic mail (email) message boxes, and a plurality of communications devices for generating email messages each associated with a respective message box. The system further includes a delivery server including a plurality of queues and a controller. More particularly, the controller is for storing the email messages generated by the communications devices in a first queue, and attempting to send the stored email messages to the at least one destination server at a first sending rate. The controller also moves email messages stored in the first queue to a second queue based upon a delivery failure. The controller then attempts to send email messages stored in the second queue to the at least one destination server at a second sending rate less than the first sending rate. The controller also advantageously moves email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message.

Independent Claim 10 is directed to a corresponding delivery server of independent Claim 1. Independent Claim 17 is directed to a corresponding method of independent Claim 1, and

independent Claim 24 is directed to a related computer-readable medium.

II. The Claims Are Patentable

The Examiner rejected independent Claims 1, 10, 17 and 24 over a combination of Shaw et al. and D'Souza et al. Shaw et al. is directed to an enterprise email management system for handling large volumes of email, responding through enterprise email system users or automated processes. The enterprise email system processes incoming email using a set of configurable rules that examine each message for a specific attribute state condition and invoke a configurable action when the attribute satisfies the condition. A number of actions may be invoked such as routing a message to a specific mail queue. The enterprise email system assigns a mail queue timer when a message is moved into a mail queue. Each mail queue has a different mail queue timeout value that specifies the maximum amount of time that a message may sit idle within a mail queue. The enterprise email system may automatically move a message from a mail queue into a mailbox of an enterprise email system user that subscribed to the mail queue. A mailbox timer is then set for the message and the mailbox timer is compared with a mailbox timeout value that specifies the amount of time that a message may sit idle within a mail queue. If the mail queue timer expires, the message is returned to the mail queue from where it came. If the mail queue timer expires, then the message is routed to another mail queue or enterprise email user.

The Examiner correctly recognized that Shaw et al. fails to disclose storing the email messages generated by the

communications device in a first queue, and attempting to send the stored email messages to the at least one destination server at a first attempt rate. The Examiner further correctly recognized that Shaw et al. fails to disclose attempting to send email messages stored in the second queue to the at least one destination server at a second rate less than the first sending rate. The Examiner then turned to D'Souza et al for these critical deficiencies.

D'Souza et al. is directed to a system and method of mitigating attacks, such as denial of service attacks in a communications network. More particularly, D'Souza et al. discloses monitoring source addresses of packets in a network and comparing the source addresses to known legitimate addresses. If a source address is known as being legitimate, the packets are placed in a high priority queue for transmission at the highest rate. Packets with unknown addresses are placed in a lower priority queue and the packet serviced at a lower rate.

Applicant submits that the Examiner mischaracterizes the Shaw et al. reference. More particularly, Applicant submits that even a selective combination of Shaw et al. and D'Souza et al. fails to disclose moving email messages stored in the first queue to a second queue based on a delivery failure. Instead Shaw et al. discloses moving messages from a first to a second queue if a queue time has expired. (See Shaw et al. Col. 11, lines 36-46). The queue timer defines a predetermined amount of time that the email message may stay in the queue without having the message expire. (See Shaw et al. Col. 11, lines 30-34). The queue timer is configurable to set the amount of time that

may elapse before an "action," for example, a response to a message, needs to occur for a message stored within the queue. (See Shaw et al. Col. 10, line 66 - Col. 11, line 5). Nowhere does it disclose moving email messages stored in the first to a second queue based on a delivery failure. Accordingly, independent Claims 1, 10, 17 and 24 are patentable for this reason alone.

Applicant further submits that even a selective combination of Shaw et al. and D'Souza et al. fails to disclose moving email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message. Instead, Shaw et al. discloses moving an email message from a first to a second queue if a queue time has expired. Still further, D'Souza et al. discloses moving a packet from the first queue to the second queue if an address is determined to be "good." (See D'Souza, Paragraph 0030). Nowhere in either Shaw et al. or D'Souza et al. does it disclose moving email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message.

The Examiner contended that Shaw et al. discloses the claim recitation "with a successfully delivered email message." As noted above, the claims recite moving email based on a delivery failure, (i.e. success is based on a delivery failure), and Shaw et al. does not disclose a delivery failure. Moreover, the Examiner contended the claimed common characteristic is disclosed in D'Souza et al., which discloses the common characteristic to be a "good" source address. The common characteristic of D'Souza et al. does not relate to a

successfully delivered email message. The Examiner is merely combining disjoint fragments of the prior art in an attempt to arrive at the claimed invention.

Applicant submits that the Examiner's combination of references is improper. More particularly, a person having ordinary skill in the art would not turn to D'Souza et al. to supply the critical deficiencies of Shaw et al. D'Souza et al. is directed to a queuing method for mitigation of packet spoofing. More particularly, D'Souza et al. attempts to mitigate attacks such as Denial of Service attacks by examining all incoming packets. In stark contrast, Shaw et al. is directed to an enterprise email management system for handling large volumes of email. Accordingly, the Examiner's combination of references is improper. Indeed, the Examiner is using impermissible hindsight reconstruction based on motivation provided by Applicant's own specification in an attempt to produce the claimed invention by selectively assembling disjoint pieces of the prior art.

Accordingly, it is submitted that independent Claims 1, 10, 17, and 24 are patentable over the prior art. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

III. CONCLUSION

In view of the arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

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